COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"Enriching Lives"

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IN REPLY PLEASE
REFER TO FILE: EP-2

March 4, 2004

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012-2756

Dear Supervisors:

APPROVE APPROPRIATION ADJUSTMENT FOR PAYMENT OF SETTLEMENT AND JUDGMENT AGAINST VARIOUS GARBAGE DISPOSAL DISTRICTS
SUPERVISORIAL DISTRICTS 1, 2, AND 3
3 VOTES

IT IS RECOMMENDED THAT YOUR BOARD:

As the governing body of the Belvedere Garbage Disposal District, approve the enclosed appropriation adjustment of $287,000 to fund judgment and settlement costs pertaining to the Cal Compact Litigation.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The appropriation adjustment is needed to fund settlement and judgment costs pertaining to two environmental cases (Shell Chemical Company, et al., vs. County of Los Angeles, et al., United States District Court Case No. CV 00-01917 MRP, and Phillips Petroleum Company, et al., vs. County of Los Angeles, et al., United States District Court Case No. CV 00-01938 MRP) in which Shell Chemical Company, Phillips Petroleum Company, and four other industrial companies seek contribution under Federal law from five County Garbage Disposal Districts and the County of Los Angeles for a share of the site cleanup costs for the Cal Compact Landfill in the City of Carson. Total payment for the settlement is $2.4 million, of which the Districts' share is 75 percent or $1.8 million, which is distributed among five Garbage Disposal Districts at

15.6 percent ($280,800) for Athens-Woodcrest-Olivita, 41 percent ($738,000) for Belvedere, 34.6 percent ($622,800) for Firestone, 3.4 percent ($61,200) for Malibu, and 5.4 percent ($97,200) for Walnut Park.

The Consent Decrees, Case No. 95-8773 MRP(MANx), which was approved by the United States District Court for the Central District of California on January 26, 2004, incorporated a negotiated payment schedule. For the Garbage Disposal Districts, two payments totaling $1,200,000 are due in Fiscal Year 2003-04 ($338,761 by March 1, 2004, and $861,239 by April 26, 2004). Additional payments in the amount of $300,000 each are due March 1, 2005, and March 1, 2006, respectively, and will be included in each fund's budget.

Implementation of Strategic Plan Goals

This action is consistent with the County Strategic Plan Goal of Fiscal Responsibility as this appropriation adjustment will provide sufficient appropriation in the Other Charges appropriation category of the Belvedere Garbage Disposal District for Public Works to fund the above judgment and settlement due Fiscal Year 2003-04.

FISCAL IMPACT/FINANCING

The current year's settlement amount to be paid by the Garbage Disposal Districts is $1,200,000. There are currently sufficient appropriations available in the Garbage Disposal Districts to make the first payment which was due March 1, 2004. However in order to make the second payment for Fiscal Year 2003-04, an appropriation adjustment is necessary to increase the Other Charges appropriation in the Belvedere Garbage Disposal District Fund (GA2) by $287,000. Funding will be provided from the District's Services and Supplies appropriation. There is no impact on the County's General Fund.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On July 1, 2003, your Board approved payment of $2.4 million to settle two environmental contamination cases in which plaintiffs Shell Chemical Company, Phillips Petroleum Company, and four other industrial companies (collectively, "industrial companies") sought contribution under Federal law from the above five County Garbage Disposal Districts and from the County for a share of the site cleanup costs for hazardous waste contamination at the Cal Compact Landfill in Carson, California. The five Garbage Disposal Districts were alleged to have sent contaminated refuse to the site through contract haulers. The County was named in the suit in connection with

permitting activities of refuse haulers conducted by the Department of Health Services. In addition to the industrial companies, the California Department of Toxic Substances Control (DTSC), the agency with regulatory oversight responsibility at the landfill, is also a party to the consent decree.

Your Board instructed County Counsel to negotiate a payment schedule which defers payment as long as possible. Following those negotiations, on January 26, 2004, the United States District Court for the Central District of California approved the consent decree which memorializes the above settlement. The consent decree incorporates a negotiated payment schedule. The first payment to DTSC is $451,681 due on March 1, 2004, followed by a $400,000 payment due March 1, 2005, and a final payment of $400,000 due March 1, 2006. In addition, payment to the industrial companies of $1,148,319 will be due no later than April 25, 2004. Seventy-five percent of those payments must be made by the five Garbage Disposal Districts, the remaining 25 percent must be made by the County.

The consent decree provides that the County and the five named Garbage Disposal Districts will receive protection against any further third-party claims related to site costs, and from a covenant not to be sued by DTSC. However, as is typical in environmental consent decrees, it also contains what is referred to as a "reopener." Only DTSC can reopen the consent decree. The reopener section provides that DTSC can issue future cleanup orders to any party including the County and/or Garbage Disposal Districts in the unlikely event that previously unknown conditions at the site or previously unknown information renders the remedy proposed in the remedial action plan for the site not protective of human health or the environment. The remedy currently proposed in the remedial action plan is a clay or monolithic soil cap to be placed over the site as well as groundwater and landfill gas monitoring. This type of a remedy is typical for a closed landfill, such as Cal Compact.

This site has been under DTSC oversight for many years. There is a great deal of data that has been developed over the years to characterize the extent of contamination at the site. Since this site has been the subject of numerous investigations over the years, it is unlikely that new conditions or information will develop which would render the proposed remedy not protective of human health or the environment. In the unlikely event that such a reopening should occur, the County and Garbage Disposal Districts have retained the right to seek contribution from third parties and to assert legal defenses deemed applicable.

The County and the five Garbage Disposal Districts also have the right to seek reimbursement of the amounts under the consent decree from third parties that may

have caused the damages, including the garbage haulers that transported or deposited contaminants at the site, and their insurers. County Counsel is in the process of investigating means to recover payments from these parties.

ENVIRONMENTAL DOCUMENTATION

The need for environmental documentation is not applicable to the judgment and settlement described above.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The recommended Board action will have no impact on the quality of the Districts' regular and special services being provided to all residential, and business customers of the Districts.

CONCLUSION

It is requested that two approved copies of the letter be returned to this Department.

Respectfully submitted,

JAMES A. NOYES
Director of Public Works

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Enc.

cc: Chief Administrative Office
County Counsel

BA-FORM

COUNTY OF LOS ANGELES

REQUEST FOR APPROPRIATION ADJUSTMENT

DEPARTMENT OF PUBLIC WORKS

DEPT'S. NO. 690

February 26, 2004

AUDITOR-CONTROLLER.

THE FOLLOWING APPROPRIATION ADJUSTMENT IS DEEMED NECESSARY BY THIS DEPARTMENT. WILL YOU PLEASE REPORT AS TO ACCOUNTING AND AVAILABLE BALANCES AND FORWARD TO THE CHIEF ADMINISTRATIVE OFFICER FOR HIS RECOMMENDATION OR ACTION.

ADJUSTMENT REQUESTED AND REASONS THEREFOR

FY 2003-04

3-VOTE BUDGET ADJUSTMENT

SOURCES	USES
Services and Supplies (2000)	Other Charges (5500)
GA2-PW-47000-2000-$287,000	GA2-PW-47000-5500-$287,000

JUSTIFICATION

This appropriation adjustment for the Belvedere Garbage Disposal District Fund is necessary to allow the Department of Public Works to pay the current year's Cal Compact litigation settlement amount of $1,200,000, per the attached letter to the Board of Supervisors.

Chuck Adams for
DONALD L. WOLFE, Assistant Director

CHIEF ADMINISTRATIVE OFFICER'S REPORT

REFERRED TO THE CHIEF ADMINISTRATIVE OFFICER FOR---

ACTION ✓ APPROVED AS REQUESTED ✓ AS REVISED

✓ RECOMMENDATION ~~Feb~~ Mar 3, 2004

Robert J. Maxwell
CHIEF ADMINISTRATIVE OFFICER

AUDITOR-CONTROLLER BY

NO. 209 MARCH 2, 2004

APPROVED (AS REVISED):
BOARD OF SUPERVISORS

BY

DEPUTY COUNTY CLERK